

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, PR.

2003 JAN 30 AM 10:00

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MARITZA PUBILL-RIVERA
Plaintiff(s)

v.

CIVIL NO. 97-2815 (JAG)

JOSE O CURET ET ALS.
Defendant(s)

ORDER

On January 23, 2003, after a hearing on damages pursuant to the entry of default against co-defendants doctors Amaury Hernandez and Nilma Rosado-Villanueva, Magistrate Judge Gustavo A. Gelpi issued a Report and Recommendation (Docket No. 175) recommending that co-defendants be found jointly and severally liable to plaintiff's deceased son (represented by her mother, plaintiff Maritza Pubill-Rivera) for damages based on his pain and suffering in the amount of \$100,000.00. In addition, the Magistrate Judge recommended that defendants be found liable to plaintiff in the amount of \$150,000.00 for her own personal damages caused by the death of her son Amaury. The Magistrate Judge noted that these damages were based on plaintiff's supplemental tort cause of action under Article 1802 of the Puerto Rico Civil Code, since the allegations in the complaint, even if taken as true pursuant to the entry of default against co-defendants, were insufficient to state a valid 42 U.S.C. §1983 claim under the Eight Amendment.

On January 24, 2003, Plaintiff filed her position as to the Report and Recommendation (Docket No.178), in which she stated that she has no objections to the Magistrate's findings, except that her failure to object the dismissal of the federal cause of action against the defaulting defendants

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should not be interpreted as a waiver of this issue in the event an appeal of the final judgment is filed. As to this issue, the Court has analyzed at length the reasons for which plaintiff's complaint fails to state a §1983 claim under the deliberate indifference standard governing Eight Amendment claims (See Docket No. 173). Therefore, the issue need not be revisited here.

Accordingly, the Court hereby ADOPTS the Magistrate's Report and Recommendation (Docket No.175).

Judgment shall enter accordingly.

IT IS SO ORDERED

In San Juan, Puerto Rico, this 28th day of January, 2003.


JAY A. GARCIA-GREGORY
U.S. District Judge